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HEADQUARTERS  
UNITED STATES AFRICA COMMAND  
UNIT 29951  
APO AE 09751-9951

J05

1 February 2018

MEMORANDUM FOR Commander, United States Africa Command, Unit 29951, APO AE 09751-9951

SUBJECT: (U) Legal Review - Investigation of Enemy Attack in Niger on 4 October 2017

1. (U) This responds to your request for legal review of the investigation, under the provisions of Army Regulation (AR) 15-6 (Procedures for Investigating Officers and Boards of Officers), 1 April 2016, into the enemy attack on U.S. and Nigerien forces in Niger, near the border with Mali, on 4 October 2017. There is no legal objection to the Investigating Officer's (IO) findings and recommendations.

2. (U) The investigation substantially complies with the requirements of AR 15-6 and the appointment memoranda. Although the report is not organized by the specific questions outlined in the Special Operations Command Africa 15-6 Appointment Memo, dated 17 October 2017, and/or the United States Africa Command (USAFRICOM) Appointment Memo, dated 20 October 2017, the report addresses each question.

3. (U) There are no errors in the investigation that would have an adverse effect on the substantive or procedural rights of individuals concerned; any errors present are harmless.

4. Findings:

a. (U) The findings of the IO are supported by a greater weight of the evidence than support a contrary conclusion. The evidence is annotated in the narrative of the investigation using footnotes. There is no legal objection to this method. Specific findings are detailed in Part VI of the Findings and Recommendations document.

b. (U//~~FOUO~~) While the investigation generally resolves internal inconsistencies, it does not explicitly resolve every inconsistency contained in numerous eyewitness testimony and reporting. In my determination, the inconsistencies are either (1) resolved via a preponderance of evidence or (2) harmless. For example, (b)(3) / (b)(6) states (b)(3) / (b)(6) and (b)(3) / (b)(6) left "Position Two", to support personnel at the original Troops in Contact site before (b)(3) / (b)(6) and (b)(3) / (b)(6) left "Position Two". However, the preponderance of evidence indicates (b)(3) / (b)(6) and (b)(3) / (b)(6) left "Position Two" prior to (b)(3) / (b)(6) and (b)(3) / (b)(6). As an example of a harmless inconsistency, there is conflicting testimony on the exact

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language a Nigerien Soldier shouted during a firefight occurring immediately prior to Team Ouallam's extraction. Reports indicate varying accounts of the Soldier shouting "Army", "Amie" (French for "Friend"), and (b)(3) 10 USC 130b. As a final example, Partner Nigerien 25 claims the enemy stampeded cows toward Team Ouallam and their partnered force during the ambush. This claim is not supported by a preponderance of evidence and specifically refuted in (b)(6) account of the ambush.

c. (U) If you intend to make any specific findings against a field grade officer that have not been previously referred to that officer, then those findings must be referred to the officer pursuant to AR 15-6, paragraph 2-8c.

5. (U) Recommendations: The recommendations are consistent with the findings.

6. Further action:

a. (U) As the approval authority, you are neither bound nor limited by the findings or recommendations of this investigation. You may consider any relevant information, even if it was not included in this investigation. If you do so, however, I recommend coordination with this office regarding the effects of doing so. You may reject the findings and recommendations, or adopt any portion of them, based upon your own judgment and determination. Finally, if based on this investigation you believe an allegation, as defined by DoDD 5505.06<sup>1</sup>, exists against a general officer, I recommend referring the report to the DoD Inspector General in accordance with DoDD 5505.06.

b. (U) If you approve any findings or recommendations with exceptions or substitutions, these exceptions or substitutions should be annotated. You may also return the investigation to the IO for any further action you deem necessary.

7. (U) The information contained in this document and any accompanying attachments contains attorney-client information protected from mandatory release under the Freedom of Information Act. This information may not be released outside of USAFRICOM, without prior authorization from USAFRICOM.

<sup>1</sup> Department of Defense Directive 5505.06 (Investigations of Allegations Against Senior DoD Officials), 6 June 2013.

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8. (U//~~FOUO~~) The point of contact for this action is the undersigned at . . .  
(b)(3) / (b)(6)

(b)(3) / (b)(6)

Legal Reviewer